

JAMES N. TIBBALS
JANET D. TIBBALS

IBLA 81-218

Decided September 17, 1981

Appeal from decision of the Wyoming State Office, Bureau of Land Management, declaring mining claim abandoned and void. W MC 142837.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Notice: Generally--Regulations: Generally--Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

3. Administrative Authority: Laches--Estoppel--Laches

The authority of the United states to enforce a public right or protect a public interest is not vitiated or lost

by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

APPEARANCES: Rodger McDaniel, Esq., Cheyenne, Wyoming, for appellants.

OPINION BY ADMINISTRATIVE JUDGE GRANT

James N. and Janet D. Tibbals have appealed the decision of the Wyoming State Office, Bureau of Land Management (BLM), dated November 24, 1980, declaring the Carrie Shields mining claim, W MC 142837, located August 27, 1875, abandoned and void for failure to file evidence of assessment work or notice of intention to hold the claim on or before October 22, 1979, as required by statute and regulation. 43 U.S.C. § 1744 (1976); 43 CFR 3833.2-1(a).

In their statement of reasons for appeal, appellants state in part:
[T]he Congressional intent behind the fulfillment of the recordation requirements of the Federal Land Policy and Management Act required that the Bureau of Land Management make every diligent effort to inform those persons holding valid claims as of the date of enactment of said statute of their obligations and responsibilities under the Act.

* * * That pursuant to such Congressional intent, the Bureau of Land Management did in fact take upon themselves the responsibility of notifying such claim holders of their obligations and responsibilities under this Act by sending to each such claim holder a notice indicating to them the requirement that they file a copy of the 1979 assessment no later than October 22, 1979.

* * * That in so undertaking the responsibility of informing these Appellants of such obligation and responsibility, the Bureau of Land Management negligently mailed said notice to Appellants. The notice was sent to the Appellants at an address in Boulder, Colorado rather than the address of record of these Appellants which is Boulder, Wyoming 82923.

* * * That as a result of the negligence of the Bureau of Land Management in mailing the notice to an address in Colorado, the notice did not arrive at the correct address of these Appellants until October 22, 1979, the date said notice indicated a notice of assessment was to have been filed by the Appellants in the office of the Bureau of Land Management.

Statement of Reasons at 2-3.

Appellants also contend that BLM is guilty of laches in that a period of 13 months elapsed between the due date of the filing, October 22, 1979, and the date of the decision, November 24, 1980. Appellants by and through their attorney have requested a hearing on the subject appeal.

By letter dated October 5, 1979, appellants filed a "notice of record" for the Carrie Shields lode mining claim with the Wyoming State Office, BLM. Appellants' letter stated in part: "The Annual Assessment work for the year ending August 31, 1979 has been completed and Affidavit filed." By letter dated October 24, 1979, and received by BLM on November 1, 1979, appellants submitted a photostatic copy of their affidavit of annual assessment work which was recorded in the Fremont County clerk's office.

By notice dated October 16, 1979, the Wyoming State Office informed appellants that regulations 43 CFR 3833.0-5(i) and 43 CFR 3833.1-2(a) and (b) required that an official notice of location of the claim be filed and that it must be done within the allowed time or the claims would be deemed void. The record contains a return receipt card, attached to the notice.

[1] Under section 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), the owner of a mining claim located on or before October 21, 1976, must file notice of intention to hold the claim or evidence of the performance of annual assessment work on the claim in the proper BLM office on or before October 22, 1979, and prior to December 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner, and renders the claim void. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4; Margaret E. Peterson, 55 IBLA 136 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980). The conclusive presumption of abandonment is imposed by the statute itself as a matter of law, and the statute does not invest the Secretary of the Interior with authority to waive noncompliance or to afford claimants relief from the statutory consequences. Lynn Keith, *supra*.

[2] Appellants' argument, which in effect states that BLM should be estopped from declaring their claim null and void, is without merit. Notwithstanding the fact that BLM's courtesy notice to appellants was improperly addressed, the ultimate responsibility for complying with the recordation requirements rested with appellants. The fact that appellants may have been unaware of the requirement of filing evidence of assessment work, while unfortunate, does not excuse them from compliance. All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. John Plutt, Jr., 53 IBLA 313 (1981); Paula Troester Saragoza, 53 IBLA 247 (1981); *see Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947).

[3] While the delay in the BLM decision was unfortunate, it is well established that the authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties. 43 CFR 1810.3(a); Frederick H. Larson v. State of Utah, 50 IBLA 382 (1980); United States v. Maurice L. Wilson, 38 IBLA 305 (1978).

The granting of an evidentiary hearing is discretionary with the Board. 43 CFR 4.415. Due process of law requires no evidentiary hearing where there is no dispute as to any material issue of fact and the validity of a claim depends solely on the legal effect of the undisputed facts of record. John J. Schnable, 50 IBLA 201, 204 (1980); Dorothy Smith, 44 IBLA 25 (1979). Since no issue of material fact has been presented in this case, appellants' request for a hearing is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.

Administrative Judge

We concur:

James L. Burski
Administrative Judge

Douglas E. Henriques
Administrative Judge.

